

JUDICIAL MERIT SELECTION COMMISSION
Sworn Statement to be included in Transcript of Public Hearings

Circuit Court
(Incumbent)

Full Name: Benjamin Hellams Culbertson
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1. Why do you want to serve another term as a Circuit Court Judge?
I have served as a Circuit Court Judge (excluding my appointment as a Special Circuit Court Judge) since July, 2007. I have enjoyed my position immensely. I feel that I am becoming a better judge with each term of court. I want to be a judge for the rest of my professional career.
2. Do you plan to serve your full term if re-elected?
Yes.
3. Do you have any plans to return to private practice one day?
No.
4. Have you met the Constitutional requirements for this position regarding age, residence, and years of practice?
Yes.
5. What is your philosophy regarding *ex parte* communications? Are there circumstances under which you could envision *ex parte* communications being tolerated?
My philosophy regarding *ex parte* communications is the same as stated in the *South Carolina Appellate Court Rules*. Rule 501, Cannon 3(B)(7), SCACR, prohibits all *ex parte* communications with a judge except:
 - (1) where circumstances require such communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits provided the judge reasonably believes that no party will gain a procedural or tactical advantage from the communication and the judge promptly notifies all parties of the substance of the communication and allows an opportunity to respond;
 - (2) to obtain advise of a disinterested expert on the law applicable to the proceeding if the judge gives notice to the parties of the person consulted and the substance of the advise and affords the parties reasonable opportunity to respond;



- (3) to consult with court personnel whose function is to aid the judge in carrying out adjudicative responsibilities or with other judges;
 - (4) with the consent of the parties to mediate or settle matters pending before the judge;
 - (5) those communications expressly permitted by law, such as the issuance of temporary restraining orders under limited circumstances.
6. What is your philosophy on recusal, especially in situations in which lawyer-legislators, former associates, or law partners are to appear before you?

Rule 501, Canon 3(E)(1), SCACR, requires a judge to disqualify himself or herself in which the judge's impartiality might reasonably be questioned. Certainly, a judge should recuse himself or herself in instances where the judge served as a lawyer in the matter in controversy and/or practiced law with the lawyer appearing before the judge during the time in which the lawyer was associated with the matter in controversy. At all times, the judge should avoid even the appearance of impropriety.

Since I have now been a circuit court judge for over 7 years, I generally do not have conflicts as a result of lawyer-legislators, former associates or law partners appearing before me.

7. If you disclosed something that had the appearance of bias, but you believed it would not actually prejudice your impartiality, what deference would you give a party that requested your recusal? Would you grant such a motion?

After disclosing something that has the appearance of bias, a judge must recuse himself or herself if requested by a party or lawyer to the proceeding.

8. How would you handle the appearance of impropriety because of the financial or social involvement of your spouse or a close relative?

If the financial or social involvement did not affect my impartiality, I would advise the parties and lawyers, on the record, of the involvement that gives the appearance of impropriety. I would then allow them to consider, out of my presence, whether to waive my disqualification from presiding over the matter. If any of the parties or lawyers do not waive my disqualification, I would then recuse myself from the proceeding. If, on the other hand, all parties and lawyers waived my disqualification on the record, I would then continue to participate in the proceeding.

9. What standards have you set for yourself regarding the acceptance of gifts or social hospitality?

A judge shall not accept, and shall urge members of the judge's family residing in the judge's household, not to accept, a gift, bequest, favor or loan from anyone except for:

- (1) a gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system or the administration of justice;
- (2) a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member residing in the judge's household provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge;
- (3) ordinary social hospitality; and
- (4) a gift from a relative or friend, for a special occasion (i.e., wedding, birthday, anniversary) provided the gift is fairly commensurate with the occasion and relationship.

10. How would you handle a situation in which you became aware of misconduct of a lawyer or of a fellow judge?

If I receive information that a judge or lawyer has engaged in misconduct, then Rule 501, Canon 3(D) states that I should take "appropriate action," which may include direct communication with the judge or lawyer who has committed the violation, other direct action if available, and reporting the violation to the appropriate authority. If I have knowledge that a judge has committed a violation of the Code of Judicial Standards that raises a substantial question as to the judge's fitness for office or, if I have knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer, then I must report the violations to the appropriate authority, agency or other body.

11. Are you affiliated with any political parties, boards or commissions that, if you were re-elected, would need to be re-evaluated?

No.

12. Do you have any business activities that you would envision remaining involved with if reelected to the bench?

No.

13. How do you handle the drafting of orders?

Whenever appropriate, I draft my own orders. If I direct an attorney in the proceeding to prepare an order, I state on the record or in writing to all attorneys the contents desired in the order. Before presenting the order to me for signature, I require the attorney preparing the order to provide all other attorneys with a copy of the proposed

order and give those attorneys opportunity to respond to the proposed order.

If an attorney is preparing the order, I also log into my computer calendar the date the order is due and the attorney that is to prepare the order.

14. What methods do you use to ensure that you and your staff meet deadlines?

I log tasks and deadlines on a program in my computer and check it daily. I also have my secretary prepare a monthly report of matters taken under advisement.

15. What is your philosophy on "judicial activism," and what effect should judges have in setting or promoting public policy?

A judge may be "judicially active" to promote the efficiency and integrity of the judicial system. However, at all times, a judge must not do anything that adversely affects the integrity of the judicial system. A judge should never be influenced by public policy and must, at all times, be impartial and ensure that all litigants receive equal treatment.

16. Canon 4 allows a judge to engage in activities to improve the law, legal system, and administration of justice. What activities do you plan to undertake to further this improvement of the legal system?

If re-elected, my primary undertaking to improve the legal system will be to continue working diligently and efficiently to bring disputes to trial quicker. I strongly favor scheduling orders that set deadlines for discovery, pretrial motions and dates upon which a case must be ready for trial. I am less inclined to grant continuances to cases that have been pending for long periods of time. To the extent that time permits, I work through bar associations and judicial conferences to improve the efficiency of the legal system.

17. Do you feel that the pressure of serving as a judge strains personal relationships (i.e. spouse, children, friends, or relatives)? How do you address this?

The pressure of serving as a judge has not strained my personal relationships and I do not feel that the pressure of serving as a judge in the future will strain personal relationships. I have a philosophy that one must work when it is time to work and devote time to one's family and friends when that time dictates. I have never had to "choose" between family, friends and my duties as a judge.

18. The following list contains five categories of offenders that would perhaps regularly appear in your court. Discuss your philosophy on sentencing for these classes of offenders.

- a. Repeat offenders: These offenders should receive maximum sentences permitted by law, especially if the offender has repeated the same offense multiple times or engaged in more serious offenses than previously committed.

- b. Juveniles (that have been waived to the circuit court): The primary consideration in these cases is the reason for the waiver of the juvenile to circuit court. If the family court waives the case to the circuit court because the juvenile committed a violent crime and the juvenile system cannot provide adequate protection to the public, then the sentence in the circuit court should be incarceration as permitted by law to protect the public. If, on the other hand, the juvenile commits a non-violent crime but, the family court waives jurisdiction to the circuit court because of the juvenile's age and the maximum sentence permitted under a juvenile system does not provide adequate time for rehabilitation, then the sentence may be for a longer period of probation to provide adequate time for rehabilitation.
 - c. White collar criminals: First time offenders of white collar crimes should be sentenced the same as first time offenders of non-violent blue collar crimes. Repeat offenders of white collar crimes should be sentenced the same as repeat offenders of non-violent blue collar crimes.
 - d. Defendants with a socially and/or economically disadvantaged background: If the defendant commits a violent crime that endangers the public, then little to no consideration is given to the socially and/or economically disadvantaged background of the defendant. If, on the other hand, the defendant is a first time offender of a non-violent crime and is a prospect for rehabilitation, then the defendant's social and/or economic background may be a valid consideration in sentencing.
 - e. Elderly defendants or those with some infirmity: If the defendant commits a violent crime that endangers the public, then little to no consideration is given to the defendant's age or infirmity. If, on the other hand, the defendant is a first time offender of a non-violent crime and is a prospect for rehabilitation, then the defendant's age and/or infirmity may be a valid consideration in sentencing.
19. Are you involved in any active investments from which you derive additional income that might impair your appearance of impartiality?
No.
20. Would you hear a case where you or a member of your family held a *de minimis* financial interest in a party involved?
No, unless I advised all parties and attorneys on the record of the financial interest, allowed the parties and attorneys to discuss the matter out of my presence and, the parties and attorneys waived my disqualification on the record and asked me to hear the case.

21. Do you belong to any organizations that discriminate based on race, religion, or gender?
No.
22. Have you met the mandatory minimum hours requirement for continuing legal education courses?
Yes.
23. What do you feel is the appropriate demeanor for a judge?
At all times, a judge shall act in a manner that promotes public confidence in the integrity and impartiality of the judiciary. A judge shall require order and decorum in proceedings before the judge. And a judge shall be patient, dignified, courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity.
24. Do the rules that you expressed in your previous answer apply only while you are on the bench or in chambers, or do these rules apply seven days a week, twenty-four hours a day?
They apply seven days a week, twenty-four hours a day.
25. Do you feel that it is ever appropriate to be angry with a member of the public, especially with a criminal defendant? Is anger ever appropriate in dealing with attorneys or a pro se litigant?
A judge should never show his or her anger. However, a judge must maintain decorum and order. Showing anger may give the appearance of bias on the judge's behalf.
26. How much money have you spent on your campaign? If it is over \$100, has that amount been reported to the House and Senate Ethics Committees?
None.
27. While campaigning for this office, have you used judicial letterhead or the services of your staff for your campaign?
No.
28. Have you sought or received the pledge of any legislator prior to this date?
No.
29. Have you sought or been offered a conditional pledge of support by any legislator pending the outcome of your screening?
No.
30. Have you asked any third parties to contact members of the General Assembly on your behalf before the final and formal screening report has been released? Are you aware of any friends or colleagues contacting members of the General Assembly on your behalf?
No.
31. Have you contacted any members of the Judicial Merit Selection Commission?
No.

32. Are you familiar with the 48-hour rule, which prohibits a candidate from seeking pledges for 48 hours after the draft report has been submitted?

Yes.

I HEREBY CERTIFY THAT THE ANSWERS TO THE ABOVE QUESTIONS ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

s/ Benjamin H. Culbertson

Sworn to before me this 1 day of August, 2014.

Lucinda LeSane

(Print Name)

Notary Public for South Carolina

My commission expires: April 11, 2021